

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 19040
[REDACTED]	)	
	)	DECISION
Petitioners.	)	
_____	)	

[Redacted](petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated June 6, 2005, asserting additional Idaho income tax, penalty, and interest in the total amount of \$3,826 for 1999.

The petitioners were residents of Idaho. They filed their 1999 Idaho income tax return in June of 2003.

The auditor received information indicating that Mrs. [Redacted] had been convicted of embezzling funds. He received court documents indicating that she had pled guilty to grand theft by embezzlement.

The U.S. Supreme Court has ruled that “unlawful, as well as lawful, gains are comprehended within the term ‘gross income.’ James v. United States, 366 U. S. 213, 218 (1961).

It appears the petitioners’ contention is that, since they have an obligation to repay the amount embezzled, these amounts are not taxable. In the James decision, the court also stated that:

If, when, and to the extent that the victim recovers back the misappropriated funds, there is of course a reduction in the embezzler’s income.

James, *supra* at 220.

The petitioners have not submitted documentation or authority to show that the funds embezzled are not taxable. Therefore, the Commission finds that the auditor’s determination must be affirmed.

WHEREFORE, the Notice of Deficiency Determination dated June 6, 2005, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (calculated to March 31, 2006):

YEAR	TAX	PENALTY	INTEREST	TOTAL
1999	\$2,388	\$ 597	\$ 936	\$ 3,921

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in envelopes addressed to:

[REDACTED]

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